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JCA

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: William E. James

Examiner: Tam Nguyen

Application No: 09/674,996

Art Unit: 3764

Filing Date: 11/02/2000

Confirmation No: 1327

Title: Automatically Variable Stride
Walk-Run-Stepper Pedal Exerciser

PETITION TO THE DIRECTOR

TO WITHDRAW HOLDING OF ABANDONMENT

(37CFR1.181)

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Dear Sir:

Applicant hereby petitions the Director to withdraw the holding of Abandonment and review the Office and Advisory Actions that have lead to that holding.

Background / Facts :

In the Advisory Action., Oct. 4, 2004, the Examiner refused to enter applicant's timely and proper Amendment, Apr. 28, 2004. This amendment was the first and only opportunity applicant has had to respond to the last Office Action, Dec. 1, 2003 in which Examiner cited a new prior art reference (item 3, below), ascribing to it qualities the device very obviously does not possess.

Examiner has repeatedly rejected applicant's broad claim and dependent claims and withdrawn others, thus maintaining a previous restriction requirement, by attributing characteristics erroneously to the cited prior art.

The primary error is evident even upon reading the Abstract or , to someone skilled in the art, upon looking at the cover page drawing of the reference. In addition, other errors were made in describing said prior art and used to support Examiner's erroneous position.

In the latest Amendment, Apr. 28, 2004, applicant explained these errors and clearly spelled out the obvious inventive differentiation over the prior art cited as specified in applicant's proposed claims. Applicant has also discussed this with Examiner by telephone twice and with the previous Supervisor and the new Supervisor to no avail.

Please Review:

- The holding of Abandonment,
- Examiner's refusal to enter Amendment of Apr. 28, 2004 , and
- Examiner's reading of the prior art and resultant final position causing Abandonment.

Chronology & Synopsis of Actions & Responses:

1. (a) ACTION, Oct. 30, 2002: Examiner required election of species.
(b) RESPONSE, Dec. 2, 2002: Species 'B' (Fig. 4) elected.
2. (a) ACTION, Feb. 19, 2003: Examiner cited Rodgers, Jr. (5,987,163) , rejecting claim 1 and others as anticipated, commenting: word "detecting" in claim was ambiguous.
(b) RESPONSE, May 19, 2003 with (3) supplemental amendments thru Aug, 4, 2003 (Attorney made many mistakes): Applicant revised claim 1 (now claim 22), replacing "detecting" with: "means for returning....pedals to a constant forward step-down position at end of stride independently of stride length..." Applicant argued that Rodgers did not have independent pedal return action but had "equal and opposite" (dependent) connection between the pedals and did not meet applicant's claim 22 nor added broad claim 41.

NOTE: In applicant's Specification (p. 4) applicant discussed this very problem, equal and opposite (dependent) action, of prior art pedal devices as the reason automatically variable stride in-place normal walk-run action as on a treadmill is not possible on pedal exercisers and that this is the basis for the invention. This has been in the Specification since applicant's Provisional Application, filed July 27, 1998.

(Revocation of Power of Attorney: Oct. 10, 2003 ; now: "pro se")

3. (a) ACTION, Dec. 1, 2003: Examiner cited new reference Rawls, et al (5,914,072) and commented: "Applicant's arguments (re previous ref.) are moot in view of new grounds for rejection." and rejected claim 22 and others as anticipated, withdrawing others as having no generic claim. (See excerpts of examiner's erroneous statements below.)

(b) RESPONSE, Feb. 26, 2004: (Non-compliant Amendment; see items (c) and (d))

(c) ADVISORY, Apr. 20, 2004: "Non-compliant Amendment".

(d) RESPONSE, Apr. 28, 2004 (essentially as (b) with corrections to comply): Applicant made long-planned corrections and revisions to Specification and revised broad claim 22, adding to preamble: "realistic, normal" (walking) and adding a whereby clause to further clarify the action enabled by the invention.

Applicant again argued prior art did not meet claim 22, the Rawls device, among other limitations, having dependent rearward-forward pedal action (as in Rodgers) and thus, does not meet Claim 22 (see p.12 of amendment).

Excerpts of Examiner's Action statements ("Rawls discloses:") compared with Rawls:

- Examiner (p. 2, no. 3): "Rawls et al disclose ... constant forward step down position..."
- Rawls (Figs. 4 -9): [Both ends of swing are shown varying as typical of a strider.]
- Examiner (no. 3): "...means for returning....independently of stride length..."
- Rawls (Abstract, l. 5): "A swing control member interconnects the swing arms to provide a

dependent action with the rearward movement of one pedal causing the forward movement of the other..."

- Examiner (p. 3, no. 5): "...a return means comprising springs (106)..."

- Rawls (Col. 12, l. 5): "spring assembly 106 serves to cushion the ...downward travel...of the right and left pedals... and ...limit the end travel...." [Figs. 16 -19 show how the springs in assembly 106 simply act (as a spring stop) on the balancing chain assembly between the pedals, and have no bearing on forward return of the pedals.]

- Examiner (p.4, l. 2): "...it would have been obvious...to substitute Rawls' spring means with a fluid means for returning..." [See above, spring assembly 106.]

- Rawls (Abstract, l. 17): "...the forward and rearward movements and the downward and upward movements are independent of each other." [This independence of vertical and horizontal motion is also opposite from the action of applicant's invention wherein step down on one pedal actually causes return forward of the opposite pedal, in some species as in 'B', Fig. 4, directly, by interconnection of the vertical motion of one pedal at step-down with forward return motion of the opposite.]

4. (a) ADVISORY, Oct. 4, 2004: Examiner: "Applicant's arguments are not persuasive." Amendment not entered. (Note the over five month period since applicant's response.)

NOTE underlined words in Examiner's statement (bottom, p.2): "Finally, Rawls discloses...return of each pedal is independent of the stride length. When one pedal is pushed down and back the other pedal is returned to the front regardless of the previous stride." [These two sentences are contradictory. If the one pedal must be pushed "and back", which it must, then the return of the other is not independent. And "the front" is not equivalent to "constant forward step-down position" as in claim 22.]

In applicant's invention, no "back" motion of one pedal (stride) is necessary to return the other - its independent - and once independent of one stride, it is independent of any stride, previous, concurrent, following , etc., since strides are variable and independent also. The return

is dependent on “end of stride” only, and return is to the constant forward step-down position independently of any stride.

FURTHER DISCUSSION:

In a “strider” as in Rawls with the pendulum “swing arm” suspension of the pedals and the dependent back and forth interconnection of the swing arms, the action is limited to equal and opposite swinging of the feet always equally weighted on the pedals (user always at the center as seen in Figs. 4, 7, 8 & 9)- even during the added vertical heel-toe pivoting action (any added heel down force being necessarily balanced with less toe down force at each foot). Only at the center or neutral position (Col. 6, l. 5) , pedals side by side, can real “stepping” occur (Fig. 9). It is this vertical action that is independent (from “striding” action) (Abstract, l. 17) and is the invention in Rawls (bottom, Col, 2), all the “marketing hyperbole” in the reference aside.

Even if one could walk in a normal manner on a dependently-connected pedal device, as may be possible on the Rodgers device (with more accommodating pedals), the equal and opposite pedal action prevents such devices from supporting automatically variable in-place normal walking and running strides, and from meeting applicants claims 22 and 41.

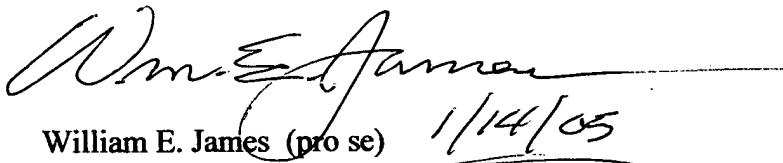
There is a distinct difference between the equally weighted, equal and opposite swinging action of a strider - as in Rawls, even with its added heel-toe action ,where the user remains at the swing center and the equal and opposite swinging strokes vary equally forward and rearward from that center or neutral position - and applicant’s invention where the user stays at the constant forward step-down position (user’s center of gravity directly above it) and real walking or running (essentially full weight on the pedal) strides are made rearward (variable) from the constant step-down position. The automatic independent pedal return enables this realistic, normal variable stride action, assuring the pedal returns to the constant step-down position (not short of it or past it.) in time for the next step down of the returning foot regardless of stride of the stepped-down foot. The step-down of the forward foot and/or lifting of the rear foot, or “end of stride”, alone causes the rear pedal to return to the constant forward position

Summary:

To applicant it has been painfully clear that a simple Boolean search with the word "independent" was relied on, with little "examination" in this case and it has been painful for this (68 year old) applicant, with over four years of very frustrating and fruitless "prosecution".

Applicant respectfully requests review of and withdrawal of the Abandonment holding and, if possible, reconsideration of the latest positions held by the Examiner, including the rejection and withdrawal of claims, and the requirement for restriction.

Respectfully submitted,


William E. James (pro se) 1/14/05

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Remarks		
Petition to the Director (6 pg.) (TC 3700) - WEF		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm Name	<u>William E. James</u>
Signature	<u>William E. James</u>
Printed name	William E. James (Applicant)
Date	1/14/2005
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